

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NATHAN L. GUINN,	§
	§ No. 584, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0207018218
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 4, 2010
Decided: November 24, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 24th day of November 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Nathan L. Guinn, filed an appeal from the Superior Court's August 20, 2010 order denying his third motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record reflects that, in May 2003, Guinn was found guilty by a Superior Court jury of Possession With Intent to Deliver Cocaine, Possession of Cocaine Within 300 Feet of a Park and Possession of Drug Paraphernalia. On the conviction of possession with intent to deliver, he was sentenced to 30 years of Level V incarceration, to be suspended after 16 years. On the conviction of possession within 300 feet of a park, he was sentenced to 5 years at Level V, to be suspended after 9 months for decreasing levels of supervision. On the conviction of possession of drug paraphernalia, he was sentenced to 1 year at Level V, to be suspended for 6 months at Level II probation. This Court affirmed Guinn's convictions on direct appeal.² Guinn unsuccessfully sought postconviction relief on two prior occasions.

(3) In this appeal from the Superior Court's denial of his latest postconviction motion on procedural grounds,³ Guinn claims that his two

¹ Supr. Ct. R. 25(a).

² *Guinn v. State*, 841 A.2d 1239 (Del. 2004).

³ Super. Ct. Crim. R. 61(i)(1), (2) and (3).

felony possession convictions constitute a violation of double jeopardy, thereby permitting him to bypass the procedural bars.⁴

(4) The double jeopardy clause of the United States Constitution prohibits multiple punishments for the same offense. The test to determine whether separate counts of an indictment constitute one or more offenses for double jeopardy purposes is whether each count requires proof of at least one element the other does not.⁵ Guinn's claim of a double jeopardy violation fails because Possession With Intent to Deliver Cocaine⁶ and Possession of Cocaine Within 300 Feet of a Church⁷ contain separate and distinct statutory elements.⁸ As such, there is no constitutional double jeopardy violation and the Superior Court correctly denied Guinn's postconviction motion on procedural grounds.

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

⁴ Super. Ct. Crim. R. 61(i)(5).

⁵ *Seward v. State*, 723 A.2d 365, 375 (Del. 1999).

⁶ Del. Code Ann. tit. 16, §4751.

⁷ Del. Code Ann. tit. 16, §4768.

⁸ *Blockburger v. United States*, 284 U.S. 299, 304 (1932).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice